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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 MELVIN LEE WILSON,

10 Petitioner,

No. CIV-S-05-0405 GEB KJM P

11 vs.

12 SCOTT KERNAN, et al.,

13 Respondents.

ORDER

14 _____/
15 Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of
16 habeas corpus pursuant to 28 U.S.C. § 2254, an application to proceed in forma pauperis and a
17 request for the appointment of counsel.

18 Examination of the in forma pauperis application reveals that petitioner is unable
19 to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be
20 granted. See 28 U.S.C. § 1915(a).

21 There currently exists no absolute right to appointment of counsel in habeas
22 proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C.
23 § 3006A authorizes the appointment of counsel at any stage of the case “if the interests of justice
24 so require.” See Rule 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does
25 not find that the interests of justice would be served by the appointment of counsel at the present
26 time.

1 Petitioner has filed a request for leave to file an amended habeas petition. Good
2 cause appearing, petitioner's request will be granted. The court will order the Clerk of the Court
3 to send petitioner a form-application for writ of habeas corpus under 28 U.S.C. § 2254 and
4 petitioner will be ordered to file his amended petition within thirty days. Petitioner may not raise
5 any claims in his amended petition that he has not first presented to the California Supreme
6 Court. See 28 U.S.C. § 2254(b)(1); Picard v. Connor, 404 U.S. 270, 276 (1971).

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Petitioner's application to proceed in forma pauperis is granted;
- 9 2. Petitioner's request for appointment of counsel is denied without prejudice to a
10 renewal of the motion at a later stage of the proceedings.
- 11 3. Petitioner's March 29, 2005 motion for leave to file an amended petition for
12 writ of habeas corpus is granted;
- 13 4. Petitioner's March 1, 2005 petition for writ of habeas corpus is dismissed and
14 plaintiff is granted thirty days within which to file an amended petition.
- 15 5. The Clerk of the Court is directed to send petitioner the court's form-
16 application for writ of habeas corpus under 28 U.S.C. § 2254.

17 DATED: April 25, 2005.

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20 UNITED STATES MAGISTRATE JUDGE
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